

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**SAMUEL DANIELS,**

**Petitioner,**

**v.**

**No. 19-cv-0176 JCH/SMV**

**MARK GALLEGOS,**

**Respondent.**

**ORDER TO CURE DEFICIENCIES**

Petitioner has submitted a habeas corpus petition. The Court determines that Petitioner's submission is deficient because he has not paid the \$5 filing fee or filed an application to proceed in district court without prepaying fees or costs in proper form. Petitioner submitted a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. [Doc. 2]. The Prisoner's Motion states, "The nature of this action is: Precedural [sic] and finance related. Should be approved due to the insufficient funds that fall short of processing needs by the County Clerk and Courts." *Id.* at 1. The Prisoner's Motion contains no further financial information and has no original signature. *Id.* at 2. Attached to the Prisoner's Motion is an Account Activity Ledger showing a balance in Petitioner's inmate account of \$140.02 as of February 3, 2019. *Id.* at 4.

Section 1915(a)(1) provides that the Court may grant leave to proceed without prepayment of fees to a prisoner who submits an affidavit that includes a statement of all assets such prisoner possesses and shows that the person is unable to pay such fees or give security. 28 U.S.C. § 1915(a)(1) (2018). The Motion submitted by Petitioner is not a proper affidavit for purposes of

§ 1915(a)(1) because it does not contain any signature under penalty of perjury. *See* [Doc. 2] at 2. Nor does the Motion explain why Petitioner is unable to pay the \$5 filing fee for this action when he has a balance of \$140.02 in his inmate account.

Petitioner must cure these deficiencies within 30 days from entry of this Order by *either* paying the full \$5 filing fee *or* submitting an Application to Proceed in District Court Without Prepaying Fees or Costs in proper form, signed under penalty of perjury. *See* 28 U.S.C. § 1915(a)(2). Failure to cure the designated deficiencies within 30 days from entry of this Order may result in dismissal of this action without further notice.

**IT IS ORDERED** that no later than **May 6, 2019**, Petitioner must *either* pay the full \$5 filing fee *or* submit an Application to Proceed in District Court Without Prepaying Fees or Costs in proper form and signed by Petitioner under penalty of perjury; and the Clerk is directed to mail to Petitioner a copy of this order and two copies of an Application to Proceed in District Court Without Prepaying Fees or Costs with instructions.

**IT IS SO ORDERED.**



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**STEPHAN M. VIDMAR**  
**United States Magistrate Judge**